

REMARKS

Applicant respectfully requests reconsideration of this application in view of the above amendments and the following remarks.

Claims 1-9 remain in this application. Claim 9 has been amended, as further discussed below.

The present invention relates to a cosmetic composition comprising certain amounts of the naturally occurring extracts of rosemary, henna, melanin, and optionally sunflower. The composition exhibits an unexpected combination of properties, specifically improved gloss, ability to retain color, especially for dark hair, and protection against UV radiation.

Claim 9 was rejected under 35 U.S.C. §112, second paragraph, as indefinite. Claim 9 has been corrected to depend from claim 8.

Claims 1, 4, 5, and 8 stand rejected less than 35 U.S.C. §103(a) as obvious over US Patent No. 4,839,168 and US Patent No. 5,157,075. The Examiner argues the '168 patent teaches using rosemary and henna in hair cosmetics in the amounts of 0.001 to 10.0 weight percent. The Examiner further argues the '075 patent teaches using melanin in hair cosmetics. The Examiner argues it would have been obvious to combine rosemary, henna and melanin in a single composition in the amounts claimed.

Similarly, claims 2, 3, 5-7 and 9 are rejected under 35 U.S.C. §103(a) as obvious over the '168 and '075 patents in view of US Patent No. 5,972,322. The Examiner argues the '322 patent discloses the use of sunflower in hair cosmetic compositions. The Examiner also notes that applicant acknowledges these are all known ingredients, and that combining them would have been obvious to one skilled in the art.

Applicant disagrees. Applicant does not dispute that these naturally occurring components are indeed known, as evidenced by the references cited. However, applicant's

Serial No. 10/714,721

combination of them into a single composition is not known, nor is it obvious. Applicant has identified cosmetic compositions with two specific combinations: 1) rosemary, henna and melanin, and 2) rosemary; henna, melanin and sunflower. These two combinations result in an unexpected, desirable portfolio of properties, namely improved gloss, ability to retain color, especially for dark hair, and protection against UV radiation. See applicant's examples.

The Examiner's argument that it would have been obvious to arrive at the claimed combination relies on hindsight. There is no motivation in the separate references to combine them particularly in the amounts claimed. Absent this, a *prima facie* case of obviousness cannot be established.

In conclusion, the present claims are patentable. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

By: /Sharon E. Hayner/
Sharon E. Hayner
Reg. No. 33,058

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-2242
Dated: June 6, 2005